THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11671 OF 2003

Dated: 23rd October, 2006.

Ch. Ramprasad … Petitioner

And

1. Union of India, Ministry of Railways,
   Rep. by its Secretary, New Delhi;
   And 2 others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11671 OF 2003

ORDER :

This writ petition is filed seeking a declaration that the order of the 2nd respondent dated 5-6-2003 banning any dealings with the petitioner for a period of 5 years is arbitrary and illegal apart from being contrary to the order of this Court in W.P.No.24722 of 2003 dated 20-1-2003.

The petitioner being a contractor, who claims to have been executing the works of the Railways regularly since 1988-89, was entrusted with the work of supply of 10 Nos. of Point Contractor Relay Units vide agreement dated 27-4-1993. He was also entrusted another work of supply of 7 Nos. of the said Railway Units under a separate agreement dated 19-7-1993. The said works were executed and after verifying genuineness and quality of the items supplied, the bills were also cleared by the Railways without raising any objection. While so, vide letters dated 8-10-1996 and 13-12-1996 addressed by the Deputy Chief Vigilance Officer, S&T, SD, GM's Office, Vigilance Branch, Secunderabad, the petitioner was required to furnish the information relating to the details of purchase order placed by the petitioner to M/s. Siemens Limited, Bombay in connection with the procurement of supplies under the agreements dated 27-4-1993 and 19-7-1993. Since the said procurement was made about 3 years ago, the petitioner could not produce the required documents and informed the same to the Deputy Chief Vigilance Officer on 24-12-1996. Having received the same, the respondents kept quiet and no

further steps were taken.

Thereafter, under a fresh agreement dated 15-6-1998 the petitioner was entrusted the work of providing Circuit Interlocking at Denduluru. The petitioner completed the work and when he submitted his 6th on account bill, the Department deducted a sum of Rs.1,00,000/- out of Rs.1,75,257/- covered by the said bill. Apart from the said Rs.1,00,000/-, a further sum of Rs.1,50,000/- representing the security deposit given by the petitioner in respect of contract dated 30-3-1994 was also due from the respondents. It is alleged that in spite of repeated representations, the respondents failed to release of the said amounts., but, on the other hand, illegally collected a further sum of Rs.98,000/- from the petitioner.

It is pleaded that after a lot of persuasions though a sum of Rs.1,50,000/- representing the security deposit was released, the respondents failed to refund a sum of Rs.1,00,000/- which was illegally withheld from the work executed under the agreement dated 15-6-1998 apart from Rs.98,000/- illegally collected from him. Without refunding the said amount, the 3rd respondent issued proceedings dated 1-10-2002 enclosing a Memorandum and Statement of imputations/charges signed by the 2nd respondent and calling upon the petitioner to submit his explanation by 8-11-2002. In the said Memo dated 19-9-2002 several allegations were made against the petitioner and all the concerned were directed not to have any dealings with the petitioner stating that it was proposed to blacklist the petitioner. In response, the petitioner submitted a representation dated 6-11-2002 to the 3rd respondent requesting to furnish the relevant documents. The respondents neither furnished the documents nor conducted any enquiry. In the circumstances, the petitioner filed W.P.No.24722 of 2002 assailing the action of the respondents. In the counter-affidavit filed in the said writ petition, the respondents stated that they would take a decision whether to blacklist

the petitioner or not only after receipt of the representation from the petitioner and after due enquiry. Recording the said statement, this Court disposed of W.P.No.24722 of 2002 by order dated 20-6-2003 with a direction to the respondents to dispose of the case relating to the blacklisting of the petitioner after following the procedure prescribed and after affording an opportunity of being heard to the petitioner as per the rules and regulations in force.

The petitioner alleges that without complying with the said order of this Court, the 2nd respondent passed the impugned order dated 5-6-2003 banning the petitioner from having any dealings with the Railways for a period of five years w.e.f. 31-5-2003. The said order is under challenge in this writ petition contending inter alia that the action of the respondents in not considering his representation dated 6-11-2002 and not providing an opportunity of being heard as directed by this Court in W.P.No.24722 of 2002 is arbitrary, illegal and violative of the principles of natural justice apart from being contrary to the order of this Court.

In the counter-affidavit filed on behalf of the respondents, it is stated that the petitioner having obtained the contract under agreements dated 27-4-1993 and 19-7-1993 received the amounts contrary to the conditions of the agreements. The petitioner secured the said payments illegally in collusion with some of the officials working in the Railways without producing any documentary evidence evidencing the source of purchase. Since no material whatsoever was forthcoming from the petitioner that he purchased PCRs from M/s. Siemens Limited or any authorized source and since the petitioner failed to furnish the necessary details, the matter was referred by the Vigilance Cell to the manufacturer itself i.e., M/s. Siemens Limited. On the basis of the information submitted by M/s. Siemens Limited, it was found that the entire transaction was hit by the fraudulent means adopted by the petitioner. Accordingly, the railway administration issued instructions to recover the cost of the subject material from the

petitioner and accordingly a sum of Rs.1,00,000/- was recovered towards cost of 10 PCRs from the other on-going contracts of the petitioner as per the general conditions of contract. So far as the allegation that the directions of this Court in the earlier writ petition were not complied with, it is stated that there is no regulation made by the Rule Making Authority requiring the railway administration to give an opportunity of personal hearing before blacklisting. Since sufficient opportunity was afforded to the petitioner against the proposed action in accordance with law, the interference by this Court is not warranted.

I have heard the learned Counsel for both the parties and perused the material on record.

The impugned order dated 5-6-2003 runs as under :

> *"In reference to the memorandum of imputation served on you vide this office letter cited above. The matter has been carefully considered and found that charges indicated in above memorandum are proved and the Ministry of Railways (Railway Board), New Delhi have decided to ban dealings with you for a period of five years with immediate effect (i.e. 31.05.2003)."*

As noted above, the above said order was preceded by Memorandum of Imputation making various allegations and calling upon the petitioner to show-cause as to why he should not be blacklisted. The petitioner filed W.P.No.24722 of 2002 contending that the relevant papers relied upon by the department were not supplied to him and that the conclusions drawn in the Memorandum of Imputations shows that the respondents had pre-determined the issue. The said writ petition was disposed of by this Court after hearing both the parties with a direction to the respondents to dispose of the case after following the procedure prescribed, by taking into consideration the representation of the petitioner and affording him an opportunity of being heard as per the rules and regulations in force.

It is not in dispute that after disposal of the said writ petition, no further opportunity was provided to the petitioner and particularly no

opportunity of being heard was given to the petitioner. Whereas the petitioner contends that the said action of the respondents is not only in violation of the principles of natural justice but also contrary to the order of this court, the contention of the respondents is that it is not mandatory to afford an opportunity of being heard before blacklisting the petitioner. It is contended that even as per the order of this Court an opportunity of being heard has to be given as per the rules and regulations in force and since the rules and regulations in force do not provide for personal hearing, the respondents cannot be found fault with for not giving a personal hearing to the petitioner.

A bare perusal of the impugned order extracted above shows that it absolutely lacks reasons. Undoubtedly, blacklisting of a contractor is penal in nature involving civil consequences which requires to be passed only after affording reasonable opportunity to the affected party to putforth his version in conformity with the principles of natural justice.

Even assuming that the rules and regulations of the railways do not provide for any personal hearing before passing order of blacklisting, in my considered opinion, the impugned order which was passed without assigning any reasons and without recording satisfaction that the allegations in the Memorandum of Imputations were established is illegal and unassailable.

The law is well settled that absence of reasons is one of the grounds for judicial review since the failure of the authority to assign reasons would result in violation of the principles of natural justice.

As expressed above, the impugned order is punitive in nature and particularly in view of the order of this Court in the earlier writ petition, the respondents ought to have passed a reasoned order after taking into consideration the explanation offered by the petitioner.

Accordingly, the impugned order is set aside and the writ petition is disposed of leaving it open to the respondents to pass appropriate orders afresh in accordance with law. The petitioner is granted liberty

to submit a fresh explanation to the memorandum of imputations dated 19-9-2002 within a period of two weeks from the date of receipt of this order. No costs.

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G. ROHINI, J.

Dt. 23–10-2006
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